

**Memorandum****To :** Mr. Verne Walton**Date :** March 4, 1987**From :** Eric F. Eisenlauer**Subject:** Base Year Value Mammoth Mountain Ski Facility
Sample Property - Mono County

This is in response to your memo to Mr. Richard Ochsner dated January 27, 1987, in which you request our advice regarding whether the portion of the Mammoth Mountain ski facility under "special use permit" is subject to annual reappraisal under the following facts which you have provided.

Mammoth Mountain ski facility is operated on approximately 2,363 acres of United States Forest Service land located in Mono County. Approximately 50 acres of the facility are operated under a term special use permit which was issued by the Forest Service in January 1973 for a 30-year term. Located on this land are the ski lodge and related facilities, 25 chairlifts, 2 gondolas and 2 T-bars. The balance of the facility which included the ski runs and approximately 1,000 acres of uncleared land is operated under a special use permit issued by the Forest Service in April 1973 "for developing and operating a lift-served recreation area." Over the years approximately 15 acres have been shifted from the special use permit to the term special use permit to accommodate expansion of facilities. The assessor has apparently used a 1975 base year value for both categories of land.

Under Forest Service rules a special use permit serves as a permissive license renewed annually by payment of the required fee which is based on a percentage of gross income. Annual applications are not necessary and the permit continues until it is no longer needed or until terminated by the Forest Service.

Term special use permits are limited by law to an area not exceeding 80 acres and to a term not exceeding 30 years. They may be amended only by mutual agreement between the Forest Service and the permittee or in accordance with the terms of the permit.

Revenue and Taxation Code section 61 (b) includes as a change in ownership as defined in section 60 "[t]he creation, renewal, sublease, or assignment of a taxable possessory interest in tax exempt real property for any term."

Property Tax Rule 21 (h), relating to possessory interests, defines "[e]xtended or renewed" to mean "the lengthening of the term of possession of an agreement by mutual consent or by the exercise of an option by either party to the agreement."

Property Tax Rule 23 provides in relevant part:

- (a) When a written instrument creating a possessory interest specifies a period of occupancy, which is to exist, the stated period shall be taken as the term of possession for purposes of valuation except as provided in this section. An option period shall be considered part of the stated period if it is reasonable to conclude that the option will be exercised.
- (b) Should a period thus determined be in conflict with the reasonable anticipated term of possession by the possessor and any successor to or assignee of the property interest, the reasonable anticipated term of possession, whether shorter or longer, shall be used instead of the stated period. In determining the reasonably anticipated term of possession, the assessor shall be guided by the intent of the public owner and the possessor, as indicated by such evidence as (1) sale prices of the subject or similar possessory interests, (2) the history of the property's use, (3) the policy of the public agency administering the lands, and (4) the actions of the possessor...

A literal application of the foregoing principles would result in an annual reappraisal of that portion of the ski facility operated under the annual special use permit because annual payment of the fee required under that permit renews the permit for another year. Thus, in theory, there is an annual renewal of the special use permit under section 61(b). Since all the land under both permits is operated as a single appraisal unit, however, the reasonable anticipated term of possession of that portion of the facility under annual special use permit would at least be the remaining term under the term permit and probably longer since it is reasonable to assume that the term permit will be renewed. Thus the annual reappraisal of that portion of the possessory interest under annual permit would be at market value based on a reasonable anticipated term of possession equal to that under the term special use permit. Such a conclusion results from treating the possession of land under the annual special use permit as a separate possessory interest from the possession of land under the term special use permit even though they are treated together as one appraisal unit for appraisal purposes.

In determining whether there has been a renewal of a taxable possessory interest under section 61(b), we believe it is preferable to consider the two categories of land possession together as one possessory interest if they are in fact operated together as one appraisal unit. Since neither category of permit land in this case constitutes a ski facility appraisal unit without the other, they must be operated together to form such a unit. It is unrealistic to assume that either category would be operated without the other. Accordingly, for purposes of applying section 61(b), we believe both categories of permit land should be viewed as a single "taxable possessory interest in tax exempt real property." Since the term of possession of the possessory interest fixed by agreement expires January 2003 and since that term of possession has not been lengthened "by mutual consent or by the exercise of option by either party to the agreement," there has been no renewal of a taxable possessory interest under section 61(b). The base year value, in our view, is therefore the 1975 base year value properly indexed for both categories of permit land. This of course assumes that the assessor's 1975 base year value was based on a 30-year term for both categories of permit land.

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cc: Mr. Gordon P. Adelman
Mr. Robert Gustafson

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